

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 - WATER QUALITY STANDARDS

DOCKET NO. 58-0102-0801

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5220, Idaho Code, and IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality," Sections 810 through 815, notice is hereby given that this agency intends to promulgate a rule and desires public participation before publishing a proposed rule. This rulemaking action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

METHOD OF PARTICIPATION: Those interested in participating in the negotiated rulemaking process are encouraged to attend the following meeting. For those who cannot participate by attending the meeting, information for submitting written comments is provided at the end of this notice.

MEETING SCHEDULE: The negotiated rulemaking meeting will be held as follows. Additional meetings may be scheduled if necessary. For information regarding participation by telephone or scheduling of additional meetings, contact the undersigned. Requests to participate by telephone must be made by December 15, 2008.

WEDNESDAY - DECEMBER 17, 2008 - 9 a.m. to 12 NOON

DEPARTMENT OF ENVIRONMENTAL QUALITY

Conference Room D

1410 N. Hilton, Boise, Idaho

PRELIMINARY DRAFT: By December 3, 2008, a preliminary draft of the rule can be obtained at http://www.deq.idaho.gov/rules/water/58_0102_0801_negotiated.cfm or by contacting Paula Wilson at paula.wilson@deq.idaho.gov, (208)373-0418.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to protect human health from adverse effects of elevated arsenic (As) and protect sensitive aquatic life from cadmium (Cd) toxicity in low hardness waters. In the preliminary draft rule, the Department of Environmental Quality (DEQ) proposes to lower Idaho's arsenic (As) human health criteria from 50 ug/L to 10 ug/L and lower the low-end hardness cap used in calculation of cadmium (Cd) aquatic life criteria from 25 mg/L to 10mg/L or less (Section 210). In addition, DEQ proposes to make nonsubstantive revisions to portions of Section 210 identified as needing correction or clarification.

DEQ is also initiating this rulemaking in an effort to forestall pending legal action against the U.S. Environmental Protection Agency (EPA) that would force EPA to disapprove Idaho's As standard and require EPA to promulgate a federal rule to lower the As human health criteria applicable to Idaho waters. EPA is also prepared to disapprove Idaho's Cd standard to remove the low end hardness cap for calculating criteria. DEQ proposes to reduce the low end hardness cap for Cd from 25 mg/L to 10 mg/L or less. Idaho's current As human health criteria are also several times higher than EPA's recommendation for protecting human health.

The text of the rule will be drafted by DEQ in conjunction with a negotiating committee made up of persons having an interest in the development of this rule. Anyone with an interest in the quality of surface water in Idaho may be interested in participating in this rulemaking. For As, those affected include Idahoans that eat fish caught from Idaho surface waters and dischargers of As to surface water. For Cd, those affected include those who enjoy or profit from healthy communities of aquatic life in, and dischargers of Cd to, Idaho's surface waters with hardness below 25 mg/L.

Upon conclusion of negotiations, DEQ intends to publish a proposed rule for public comment in the spring of 2009.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact Don Essig at don.essig@deq.idaho.gov, (208)373-0119.

For those who cannot participate by attending the scheduled meeting, written comments may be submitted by mail, fax or e-mail at the address below. Written comments on the preliminary draft rule must be received by December 24, 2008. For information regarding submission of written comments on subsequent drafts of the negotiated rule, and to receive the most recent version of the draft negotiated rule, contact the undersigned.

Dated this 31st day of October, 2008.

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